

BOIES SCHILLER FLEXNER LLP

David Boies (admitted pro hac vice)

333 Main Street

Armonk, NY 10504

Tel.: (914) 749-8200

dboies@bsfllp.com

Mark C. Mao, CA Bar No. 236165

Beko Reblitz-Richardson, CA Bar No. 238027

44 Montgomery St., 41st Floor

San Francisco, CA 94104

Tel.: (415) 293-6800

mcao@bsfllp.com

brichardson@bsfllp.com

James Lee (admitted pro hac vice)

Rossana Baeza (admitted pro hac vice)

100 SE 2nd St., 28th Floor

Miami, FL 33131

Tel.: (305) 539-8400

jlee@bsfllp.com

rbaeza@bsfllp.com

Alison L. Anderson, CA Bar No. 275334

M. Logan Wright, CA Bar No. 349004

2029 Century Park East, Suite 1520

Los Angeles, CA 90067

Tel.: (213) 995-5720

alanderson@bsfllp.com

mwright@bsfllp.com

SUSMAN GODFREY L.L.P.

Bill Carmody (admitted pro hac vice)

Shawn J. Rabin (admitted pro hac vice)

Steven M. Shepard (admitted pro hac vice)

Alexander Frawley (admitted pro hac vice)

Ryan Sila (admitted pro hac vice)

One Manhattan West, 50th Floor

New York, NY 10001

Tel.: (212) 336-8330

bcarmody@susmangodfrey.com

srabin@susmangodfrey.com

sshepard@susmangodfrey.com

afrawley@susmangodfrey.com

rsila@susmangodfrey.com

Amanda K. Bonn, CA Bar No. 270891

1900 Avenue of the Stars, Suite 1400

Los Angeles, CA 90067

Tel.: (310) 789-3100

abonn@susmangodfrey.com

MORGAN & MORGAN

John A. Yanchunis (admitted pro hac vice)

Ryan J. McGee (admitted pro hac vice)

Michael F. Ram, CA Bar No. 104805

201 N. Franklin Street, 7th Floor

Tampa, FL 33602

Tel.: (813) 223-5505

jyanchunis@forthepeople.com

rmcgee@forthepeople.com

mram@forthepeople.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL

CATALDO, JULIAN

SANTIAGO, and SUSAN LYNN

HARVEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688-RS

**PLAINTIFF SAL CATALDO'S MOTION
FOR VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

The Honorable Richard Seeborg
Courtroom 3 – 17th Floor

Date:

Time:

1 **I. INTRODUCTION**

2 One of the four class representatives appointed by the Court—plaintiff Sal Cataldo—
3 respectfully requests dismissal of his claims without prejudice pursuant to Rule 41 of the Federal
4 Rules of Civil Procedure. Under Rule 41, because Google answered and moved for summary
5 judgment, the Court or Google must approve this request. Google refused, and Mr. Cataldo
6 therefore now seeks relief from the Court. There is no prejudice to Google or basis for Google to
7 oppose this motion, and the Court should therefore grant this motion and dismiss Mr. Cataldo’s
8 claims without prejudice. The other class representatives will be prepared to represent the certified
9 classes at trial starting on August 18, 2025, and granting this motion is permissible and proper.

10 **II. LEGAL STANDARD**

11 After an answer is filed, a party may only dismiss his or her claims by Court order pursuant
12 to Federal Rule of Civil Procedure 41(a)(2). “A dismissal under Rule 41(a)(2) normally is without
13 prejudice, as explicitly stated in that rule.” *Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001).
14 The reasons for a party’s election to seek voluntary dismissal are privileged, and the possible
15 explanations are many, so their withdrawal from the litigation has no probative value. *See Bolton*
16 *v. Tesoro Petroleum Corp.*, 871 F.2d 1266, 1277 (5th Cir. 1989) (“Voluntary dismissal of a suit
17 can occur for a variety of reasons. The relevance of the [dismissed claims] was, thus, marginal.”).

18 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless
19 a defendant can show that it will suffer some plain legal prejudice as a result.” *Smith*, 263 F.3d at
20 976. Legal prejudice means prejudice to “some legal interest, some legal claim, [or] some legal
21 argument.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). “[I]n
22 determining what will amount to legal prejudice, courts have examined whether a dismissal
23 without prejudice would result in the loss of a federal forum, or the right to a jury trial, or a statute-
24 of-limitations defense.” *Id.* (collecting cases). Furthermore, “the fact that the defendant has
25 already begun trial preparations does not constitute prejudice.” *In re Lowenschuss*, 67 F.3d 1394,
26 1400–01 (9th Cir. 1995).

1 **III. ARGUMENT**

2 This motion should be granted because Google cannot establish any prejudice. This class
3 action is set to be tried to a jury starting on August 18, 2025, with three other plaintiffs appointed
4 as class representatives. There is no need for a fourth class representative, particularly given the
5 time constraints provided to try the case. By granting this motion, Mr. Cataldo's claims will be
6 adjudicated just like any other absent class member who did not elect to opt out of the certified
7 classes. Google will not face another lawsuit from Mr. Cataldo covering these claims and issues,
8 and Google's preparations for trial would have occurred regardless.

9 Under these circumstances, the motion should be granted. *See, e.g., Kurin, Inc. v.*
10 *Magnolia Med. Tech., Inc.*, 2021 WL 5823707, *2 (9th Cir. Dec. 8, 2021) (granting voluntary
11 dismissal without prejudice over non-moving party's argument that excessive expenses were
12 incurred); *see also Robinson v. St. Francis Hosp.*, 2025 WL 371814, *2 (W.D. Wash. Feb. 3, 2025)
13 (granting voluntary dismissal without prejudice during pendency of summary judgment motion);
14 *Herbalife Int'l of Am., Inc. v. Kamel*, 2024 WL 5416968, **2–3 (C.D. Cal. Apr. 11, 2024) (granting
15 voluntary dismissal without prejudice following years of litigation and motions practice). Indeed,
16 denying the motion would effectively force Mr. Cataldo to remain in the action and sit for trial
17 against his wishes, which would be a strange and unjustified outcome.

18 **IV. CONCLUSION**

19 For these reasons, Plaintiff Sal Cataldo respectfully requests that the Court dismiss his
20 claims without prejudice.

21 Dated: July 30, 2025

Respectfully submitted,

22 By: /s/ Mark C. Mao

23 Mark C. Mao (CA Bar No. 236165)
24 mmao@bsflp.com
25 Beko Reblitz-Richardson (CA Bar No. 238027)
brichardson@bsflp.com
26 BOIES SCHILLER FLEXNER LLP
44 Montgomery Street, 41st Floor
27 San Francisco, CA 94104
Telephone: (415) 293 6858
28 Facsimile (415) 999 9695

1 David Boies (admitted *pro hac vice*)
2 dboies@bsfllp.com
3 BOIES SCHILLER FLEXNER LLP
4 333 Main Street
5 Armonk, NY 10504
6 Telephone: (914) 749-8200

7 James Lee (admitted *pro hac vice*)
8 jlee@bsfllp.com
9 Rossana Baeza (admitted *pro hac vice*)
10 rbaeza@bsfllp.com
11 BOIES SCHILLER FLEXNER LLP
12 100 SE 2nd Street, Suite 2800
13 Miami, FL 33131
14 Telephone: (305) 539-8400
15 Facsimile: (305) 539-1307

16 Alison L. Anderson, CA Bar No. 275334
17 alanderson@bsfllp.com
18 M. Logan Wright, CA Bar No. 349004
19 mwright@bsfllp.com
20 BOIES SCHILLER FLEXNER LLP
21 2029 Century Park East, Suite 1520
22 Los Angeles, CA 90067
23 Telephone: (813) 482-4814

24 Bill Carmody (*pro hac vice*)
25 bcarmody@susmangodfrey.com
26 Shawn J. Rabin (*pro hac vice*)
27 srabin@susmangodfrey.com
28 Steven Shepard (*pro hac vice*)
sshepard@susmangodfrey.com
Alexander P. Frawley
afrawley@susmangodfrey.com
Ryan Sila
rsila@susmangodfrey.com
SUSMAN GODFREY L.L.P.
One Manhattan West, 50th Floor
New York, NY 10001
Telephone: (212) 336-8330

Amanda Bonn (CA Bar No. 270891)
abonn@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100

John A. Yanchunis (*pro hac vice*)

1 jyanchunis@forthepeople.com
2 Ryan J. McGee (*pro hac vice*)
3 rmcgee@forthepeople.com
4 Michael F. Ram (CA Bar No. 238027)
5 mram@forthepeople.com
6 MORGAN & MORGAN, P.A.
7 201 N Franklin Street, 7th Floor
8 Tampa, FL 33602
9 Telephone: (813) 223-5505
10 Facsimile: (813) 222-4736

11 *Attorneys for Plaintiffs*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28